

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

TIMOTHY A. BARON,

Plaintiff,

v.

**3:13-CV-153
(FJS/DEP)**

**DICK MILLER, in his official capacity as
city Mayor of the City of Oneonta, in his
official capacity as President of the Board
of Foothills Performing Center, Inc., of
Oneonta, New York and in his individual
capacity; TIMOTHY WEST, JR., New
York State Trooper, in his individual
capacity; JACOB LAKOMSKI, New
York State Trooper, in his individual
capacity; RUSSELL JR. SOUTHARD,
in his official capacity as Acting Mayor
of the City of Oneonta; and FOOTHILLS
PERFORMING ARTS CENTER, INC.,**

Defendants.

APPEARANCES

OF COUNSEL

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Plaintiff *pro se*

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Performing Arts Center, Inc.

SCOTT W. BUSH, ESQ.

SCULLIN, Senior Judge

ORDER

On February 10, 2013, Plaintiff commenced this action against the Mayor of the City of Oneonta, the operator of a local performing arts center, and two New York State troopers claiming that they had deprived him of his rights under various federal and international provisions. As Defendants, Plaintiff named Foothills Performing Arts Center, Inc.; Timothy West, Jr. and Jacob Lakomski, both of whom are New York State Troopers; and Dick Miller, in his individual capacity and in his official capacity as the Mayor of the City of Oneonta and as President of the Board of Directors of Defendant Foothills Performing Arts Center, Inc.

On November 14, 2014, counsel for Defendant Miller filed a notice advising the Court that Defendant Miller had died on October 26, 2014. *See* Dkt. No. 89. Plaintiff has not made any effort to substitute Defendant Miller's successor or representative as a defendant in his place.

On March 24, 2015, Magistrate Judge Peebles issued a Report, Recommendation and Order, in which he, among other things, ordered that Russell Southard, Jr. be substituted as a Defendant in this action, in place of Defendant Dick Miller, in his official capacity as the Acting Mayor of the

City of Oneonta and that the Clerk of the Court adjust the Court's records accordingly. *See* Dkt. No. 100 at 6.

In addition, Magistrate Judge Peebles recommended that the Court dismiss Plaintiff's claims against Defendant Dick Miller, in his official capacity as President of the Board of Directors of Foothills Performing Arts Center, Inc. and in his individual capacity, thereby leaving Russell Southard, Jr. in his official capacity as Acting Mayor of the City of Oneonta; Timothy West, Jr.; Jacob Lakomski; and Foothills Performing Arts Center, Inc. as Defendants in this action. *See id.* The parties filed no objections to these recommendations.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, "the Court may 'accept, reject, or modify, in whole or in part, the recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Peebles' March 24, 2015 Report, Recommendation and Order for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Peebles' March 24, 2015 Report, Recommendation and Order, *see* Dkt. No. 100, is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

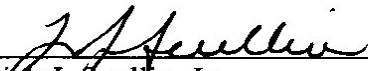
ORDERS that Plaintiff's claims against Defendant Dick Miller, in his official and individual capacities are **DISMISSED in their entirety**; thereby leaving only Russell Southard, Jr., in his official capacity as Acting Mayor of the City of Oneonta; Timothy West, Jr.; Jacob Lakomski; and

Foothills Performing Arts Center, Inc. as Defendants in this case; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: April 20, 2015
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge